

**DEPARTMENT OF STATE REVENUE**

LETTER OF FINDINGS NUMBER: 99-0634

SALES AND USE TAX

FOR TAX PERIODS: 1996-1997

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**1. Sales and Use Tax: All Terrain Vehicles**

**Authority:** IC 6-2.5.5-2, IC 6-8.1-5-1 (b), IC 6-2.5-3 –2 (a)(3), 45 IAC 2.2-5-3 (e) (3), 45 IAC 2.2-5-1(c)(3), 45 IAC 2.2-5-1 (a), 45 IAC 2.2-5-1 (a), Gross Income Tax Division v. National Bank and Trust Co., (1948) 226 Ind. 298, 79 N.E. 2d 651.

Taxpayer protests the assessment of gross retail tax on purchases of two all terrain vehicles.

**Statement of Facts**

Taxpayer is a Kentucky tree and grain farmer. In 1996 and 1997 he bought all terrain vehicles from an Indiana dealership. After an audit of the Indiana dealership, the Indiana Department of Revenue assessed gross retail tax on Taxpayer's purchases of the all terrain vehicles. Taxpayer protested the assessment. More facts will be provided as necessary.

**1. Sales and Use Tax:**

**Discussion**

Pursuant to IC 6-2.5-3-2 (a), Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana. A number of exemptions are available from use tax. All exemptions must be strictly construed against the party claiming the exemption. Gross Income Tax Division v. National Bank and Trust Co., (1948) 226 Ind. 298, 79 N.E. 2d 651. Taxpayer contends that the purchases of the all terrain vehicles qualify for exemption pursuant to the agricultural exemption found at IC 6-2.5-5-2 as follows:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

This exemption applies to “those persons occupationally engaged in producing food or agricultural commodities for sale.” 45 IAC 2.2-5-1 (a). Taxpayer is engaged in the growing of grain and oak trees for sale. Therefore, Taxpayer is one of the persons who can purchase equipment which qualifies for this exemption. The statute states that the exemption applies to machinery that is directly used in the direct production of agricultural commodities. To qualify for this exemption, the equipment “must have an immediate effect on the article being produced.” 45 IAC 2.2-5-1 (a). Machinery meets this test “if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.” 45 IAC 2.2-5-1 (a). If equipment is used in both an exempt and non exempt manner, it qualifies for exemption in proportion to the amount of exempt use. 45 IAC 2.2-5-1 (c) (3). The issue to be determined is whether any or all of the use of the all terrain vehicles qualifies for exemption.

The first all terrain vehicle was purchased to replace a tractor. The second all terrain vehicle was purchased to replace the first all terrain vehicle after it was of no further use. The all terrain vehicles look like golf carts. They have no cab, turn signals or brake lights. They cannot legally be driven on the public highways.

Taxpayer uses the all terrain vehicles a portion of the time to pull a trailer and transport tools and supplies. This is clearly a taxable use of the vehicles since it does not directly effect the process of growing trees and grain. Taxpayer also uses the all terrain vehicles to construct and check fencing. The exempt use of fencing is clarified at 45 IAC 2.2-5-3 (e) (3) as follows:

Fences, fencing materials, gates, posts, and electric fence chargers are exempt only if the same are purchased for use in confining livestock during the production processes of breeding, gestation, farrowing, calving, nursing, or finishing. . . Fencing materials are also taxable if the fence is used only as a partition fence between adjoining landowners or as a means to keep wildlife, stray animals, or trespassers from entering cropland or farm premises.

Taxpayer uses the fencing to separate his farm from other farms. He specifically uses it to designate the boundaries of his property and to keep stray animals out of his croplands and tree growing acreage. These are clearly taxable uses. Any use of the all terrain vehicles to construct or check fence would also be taxable. Taxpayer bears the burden of proving the percentage of the all terrain vehicle's use that is used in an exempt manner pursuant to IC 6-8.1-5-1 (b) as follows:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Taxpayer did not provide adequate substantiation of the proportion of the time the all terrain vehicles are used for transportation of tools, checking fence lines and construction of new fence. Taxpayer did not sustain his burden of proving the percentage of time the all terrain vehicles are used in exempt manners. Therefore Taxpayer's protest of the percentage of the use of the all terrain vehicles which would qualify them for exemption is denied.

**Finding**

Taxpayer's protest is denied.

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